

**UNITED STATES DEPARTMENT OF COMMERCE****Patent and Trademark Office**Address: COMMISSIONER OF PATENTS AND TRADEMARKS  
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/147,405	04/01/99	GUSS	B REF/GUSS/P33

HM22/1003

EXAMINER

BACON & THOMAS  
625 SLATERS LANE 4TH FLOOR  
ALEXANDRIA VA 22314-1176

LEE, L.

ART UNIT	PAPER NUMBER
1645	16

DATE MAILED: 10/03/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

<b>Office Action Summary</b>	Application No. 09/147,405	Applicant(s) <b>Guss et al</b>
	Examiner Li Lee	Group Art Unit 1645

Responsive to communication(s) filed on Aug 9, 1900

This action is FINAL.

Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle 35 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

#### Disposition of Claim

Claim(s) 1-29 is/are pending in the application.

Of the above, claim(s) 2-24 and 26-29 is/are withdrawn from consideration.

Claim(s) \_\_\_\_\_ is/are allowed.

Claim(s) 1 and 25 is/are rejected.

Claim(s) \_\_\_\_\_ is/are objected to.

Claims \_\_\_\_\_ are subject to restriction or election requirement.

#### Application Papers

See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

The proposed drawing correction, filed on \_\_\_\_\_ is  approved  disapproved.

The specification is objected to by the Examiner.

The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. § 119

Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

All  Some\*  None of the CERTIFIED copies of the priority documents have been received.

received in Application No. (Series Code/Serial Number) \_\_\_\_\_

received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

#### Attachment(s)

Notice of References Cited, PTO-892

Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

Interview Summary, PTO-413

Notice of Draftsperson's Patent Drawing Review, PTO-948

Notice of Informal Patent Application, PTO-152

— SEE OFFICE ACTION ON THE FOLLOWING PAGES —

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### **DETAILED ACTION**

1. Applicant's amendment filed on Aug 09, 2000 (Paper Number 15) has been received and entered. Claims 1, 8, and 9 have been amended, consequently claims 1-29 are pending in the instant application. Claims 1 and 25 have been examined.
2. The rejection of claims 1 and 25 under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter is withdrawn in view of applicant's amendment.
3. The rejection of claims 1 and 25 under 35 U.S.C. 102(b) as being anticipated by Pier (US 5,055,455, Oct 8, 1991) is withdrawn in view of applicant's remarks.

#### ***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 1 and 25 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1 and 25 are indefinite for using the term "originates" which is not clearly defined.

Without clearly defining the meaning of "originates", one ordinary skill in the art cannot determine the metes and the bounds of the claimed invention.

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***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1 and 25 are rejected under 35 U.S.C. 102(b) as being anticipated by Timmerman et al (Infection and Immunity, 59(11) 4187-92, 1991).

8. Timmerman et al teach a purified protein/polypeptide from *Staphylococcus epidermidis*. The protein of Timmerman et al has adhesion activity as claimed invention. The purified protein of Timmerman et al is a cell wall surface located protein from *Staphylococcus epidermidis*. One of skill in the art can conclude that the purified protein of Timmerman et al inherently has the fibrinogen binding activity. Since the US Patent Office does not have the facilities for examining and comparing applicants' product with the product of the prior art reference, the burden is on applicants to show an unobvious distinction between the material structural and functional characteristics of the claimed product and the product of the prior art. See *In re Best*, 562 F.2d 1252, 195 USPQ 430 (CCPA 1977).

***Status of Claims***

9. No claims are allowed. All claims stand rejected.

Any inquiry of a general nature or relating to the status of this general application should be directed to the Group receptionist whose telephone number is (703) 308-0196.

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Papers relating to this application may be submitted to Technology Center 1600, Group 1645 by facsimile transmission. The faxing of such papers must conform with the notice published in the Official Gazette, 1096 OG 30 (November 15, 1989). Should applicant wish to FAX a response, the current FAX number for Group 1600 is (703) 308-4242.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Li Lee whose telephone number is (703) 308-8891. The examiner can normally be reached on Monday-Friday from 8:30 AM to 5:00 PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lynette Smith, can be reached at (703) 308-3909.

Li Lee  
September 28, 2000

*L. J. Smith*  
LYNETTE R. F. SMITH  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1600